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ECONOMICS &  
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# **MESTRADO**

## **CIÊNCIAS EMPRESARIAIS**

### **TRABALHO FINAL DE MESTRADO**

#### **DISSERTAÇÃO**

**PACKAGING DESIGN AND COPYCATTING  
A CASE STUDY**

**MADALENA FERNANDES CARDOSO**

**OUTUBRO – 2018**

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## Abstract

This dissertation drives throughout packaging, private labels and copycatting literature and analyses a potential copycatting case study. For this purpose, an empirical quantitative study was carried out comparing four of the main competitors in the Energy Drink sector. The results confirmed that the case study Private Label was in fact attested as a copycat of the National Brand. Further, it demonstrated that packaging similarity has its impact in the consumers perception, as it creates between products an association that gives to the consumer the perception that both products have similar quality and offer the same benefits.

This demonstrates the threat that private label copycatting may represent to national brands and the major influence of packaging on consumer behaviour and its significance to organizations.

**Key-words:** Packaging, Copycat, Private Labels, National Brands

## Resumo

Esta dissertação aborda literatura de *packaging*, *private labels* e *copycatting* e analisa um estudo de caso de potencial *copycatting*. Para tal, foi realizado um estudo empírico quantitativo que compara quatro dos principais concorrentes do setor de Bebidas Energéticas. Os resultados indicam que a *Private Label* do estudo de caso foi de facto confirmado como *copycatting* da *National Brand*. Além disso, demonstrou que a semelhança entre *packaging* tem impacto na perceção do consumidor, pois cria entre os produtos uma associação que dá ao consumidor a ideia de que ambos têm a mesma qualidade e oferecem os mesmos benefícios.

É assim demonstrado a ameaça que o *copycatting* das *Private Labels* pode representar para as *National Brands* e a enorme influência que o *packaging* exerce no comportamento do consumidor e sua importância para as organizações.

**Palavras-Chave:** Packaging, Copycat, Private Labels, National Brands



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## 1. INTRODUCTION

Now more than ever it is time for packaging to establish itself as an element of crucial importance for the brand when communicating with the consumer. There is an increasing correlation between the investment in design and an outstanding performance in the market, which shows that enterprises that use design as a strategic tool have clearly better performances than those who do not (Rae, 2013). There are several companies that are beginning to understand the power of design, and its use to achieve and maintain both their success and economic welfare (Keller, 1993; Rae, 2013).

Design helps organizations to differentiate their products and to communicate their brand to consumers (Ambrose & Harris 2011; Mishra, 2015). Within design, it is increasingly evident that packaging is one of the key elements in communicating a product. Known as the *Silent Salesman*<sup>1</sup> packaging design has a major influence on consumer behaviour, especially when it comes to Fast Moving Consumer Goods.

Due to the fragmentation of the advertising media, more and more organizations are investing on packaging as a means of communicating the brand directly to the consumer. In fact, advertising creates awareness and desire for the brand, but it is when the consumer is in the points of sale in contact with several similar products, that the packaging design distinguishes a given product from its competitors, purchase decisions are made or even the loyalty to the brand is set (Ambrose & Harris, 2011; DuPuis & Silva, 2011). Procter & Gamble describes this moment as the first Moment of Truth<sup>2</sup> (Nelson & Ellison, 2005).

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<sup>1</sup> The concept "Silent Salesman" was first brought up by James Pilditch (1929-95) in his book "The Silent Salesman" in 1972 (Orth & Malkewitz, 2006).

<sup>2</sup> "Procter & Gamble believes shoppers make up their mind about a product in about the time it takes to read this [sentence]." In Nelson & Ellison – The Wall Street Journal (2005).

Product packaging is surely considered as a vital brand communication media utterly because consumers ground their purchasing decisions on their perception of the product, primarily conveyed by its visual appearance. Its aesthetic influences the attitudes and behaviours of the consumer and may even encourage the act of purchase. (Mittal, 2013; Nawaz, Billoo, & Lakhan, 2012; Mumcua & Kimza, 2015).

As retail competition grows fierce in shelves, products with innovation and unique packaging pop up to attract the consumers eye, and so, a favored way to compete for consumers' attention is simply to take advantage of and copy trade dresses. Retail copycat Private Labels have thus become a major threat to National Brands as they might address to another product (usually the leader) without causing inferences in the consumer (Kumar & Steenkamp, 2007; Chen & Huddleston, 2016) and acquiring manufacturer characteristics by association (Walsh, Shiu & Hassan, 2012; Vale, Matos & Caiado, 2015; Vale & Matos, 2016).

The focus of this dissertation will be to demonstrate throughout the literature and a case study analysis of an apparent copycatting case, the major influence of packaging on consumer behaviour and its significance to organizations.

The dissertation is structured in four parts. Initially, a review of the literature where packaging and its characteristics are described, its relationship with the consumer and a view of its role in retail through private labels and copycatting. Further the case study is described, as is the research method, and finally a general analysis of the investigation made and conclusions.

## 2. LITERATURE REVIEW

### 2.1. Packaging

Visual communication has clearly been acknowledged as an enormous mechanism of transmitting messages that awakens and attracts the attention of the consumer, driving them to the act of purchase (DuPuis & Silva, 2011).

Packaging is something that holds, protects, stores and communicates a product, enabling both product and brand for market offering (Kotler, Keller, Brady, Goodman & Hansen, 2009; Ambrose & Harris, 2011). It is appointed as one of the major components in this communication, will undoubtedly be one of the major elements in advertising a product being its so-called "business card". Packaging has a great influence on consumer behaviour not only in communication circumstances but also in functional and environmental ones (Mittal, 2013; Kenneth & Bugusu, 2007).

Apart from the belief that packaging design is undoubtedly part of the marketing process, there is still some dissension on where packaging stands in the Marketing Mix. The Marketing Mix integrates a set of components (4 P's) that maximize the awareness and sales of a product/service: (i) Price – the value that the consumer is willing to pay for the product/service; (ii) Promotion – the activities that create awareness for the product/service; (iii) Place – where the product/service is displayed to the consumer and (iv) Product – combination of features and elements that answer to the needs or desires of the consumer (Calver, 2004; Kotler *et al.* 2009). Some authors acknowledge packaging as part of the Product component (Calver, 2004; Kotler *et al.* 2009), yet others (Ambrose & Harris, 2011; DuPuis & Silva, 2011) believe that packaging deserves its own place in the Marketing Mix spectrum thence adding it as a fifth 'P'



which synthesizes the previous four components in the visual aspect of the brand – physical characteristics of the product, pricing strategies, how and where it will be promoted.

The packaging represents the brand in the consumer's eyes better than any other advertising channel. Consumers can indeed interact with packaging – it is tangible, real – and it may be what triggers the desire of purchase in the consumer (Mininni, 2016). As stated by Mininni (2016), when properly done, packaging enhances the product's brand image, increasing the perceived value of the product, thus competing with other brands. It is therefore a critical factor between rival products and the best way for brands to connect with consumers.

Being successful at integrating the packaging design into the brand DNA is now more than ever an immense competitive advantage. However, packaging has not always been the powerful communication channel that we know today. Like many aspects of human life, it has had an extensive evolution since its emergence. For every need that loomed there were great packaging solutions and even though many times undervalued, they are the outcome of many years of innovation and should be pointed out (Berger, 2002).

Similar to advertising, packaging design appeals to our emotions and arouses our attention to products' diverse beneficial characteristics, making us not pay as much attention to the less advantageous. Therefore, it is evident that colors, materials and other elements are carefully thought so that the packing performs its purpose (Bernat, 2011).

### *2.1.1. Functions*

The packaging functions are discussed by several authors over time. For example, DuPuis & Silva (2011) define six of packaging purposes: (i) Containment; (ii) Security; (iii) Protection; (iv) Convenience; (v) Information and (vi) Marketing. Mestriner (2002), divides the functions in: (i) Primary - contain, protect and transport the product; (ii) Technological - all the manipulation of materials so that the product can be preserved; (iii) Market - where it is necessary to attract the consumer's attention and stimulate the purchase desire; (iv) Conceptual - whereby the development of the brand and added value and (v) Communications - the transmission of the product and the brand to the consumer.

Both authors are congruent with Retorta (1992) which divides the packaging functions in: (i) Structural, namely containing, carrying and protecting the product; (ii) Visual, for example, to inform, differentiate, appeal and communicate the brand and/or product.

Currently packaging is much more than a way of storing a product. However, without its essential features of containing, protecting and transporting it would not be possible to merchandise numerous products (DuPuis & Silva, 2011; Mittal 2013). Retorta (1992), Berger (2002) and Risch (2009) describe how it became necessary to carry products in containers (packaging) enabling their distribution and use, ensuring that the features of the product remain unchanged, from the producer until it reaches the consumer. With the development of packaging, came the need to modify certain characteristics (shape, material, weight, etc.) to suit market needs such as storage and stowage, simplifying and optimizing logistics.

Nonetheless, it is increasingly crucial to use packaging as a support for product and brand information and communication. The additional functions described by Mestriner (2002) and Dupuis & Silva (2011) are precisely those that will surely add extra value to the product, and it is in this dimension that organizations are focusing more and more.

Although additional, these functions should not be neglected. These are important not only for organizations but also for the consumer since the information present in the packaging design will differentiate a product from the competition through communication attributes such as images, symbols, photographs, instructions, among other things. The more noticeable this communication, the easier it will be to persuade the consumer to purchase the product/service (Nawaz, Billoo & Lakhan, 2012; McCabe, 2014). This is where packaging has a vital role in marketing as a promotional tool, coaxing the consumer at the time of purchase.

In most cases, states Bernat (2011), the moment of purchase decision is at the point of sale and being the product packaging the element that more stands out in this moment, it becomes clear that packaging establishes itself as a direct communication mean with the consumer. Therefore, throughout the transmission of the brand image, packaging design intends to attain consumer preference resulting in the purchase of the product and the likely consumer loyalty. The functions of packaging design are therefore: (i) Identify the product; (ii) Differentiate from competing products; (iii) Inform the benefits of the product; (iv) Increase sales and (v) Consumer loyalty (Mestriner, 2002; Fantoni, 2003).

Communication through packaging design will stimulate a series of impulses in the consumer that may influence not only product sales but eventually the competitive advantage of organizations. Hence, one can say that today it is essential that

organizations take a chance and devote themselves to a good packaging, thus it is surely one of the best investments that can be done (Mestriner, 2002; Mininni, 2016).

### *2.1.2. Attributes*

It is in first contact with the attributes of packaging that the consumer establishes a visual relationship with the product. These visual elements, such as the material, shape, label and color, transform packaging into a unique communication and persuasion tool.

#### Material

For a brand to establish itself as high quality it must develop a packaging that reflects high quality rather than weakness (luxury goods for example) and therefore there must be not only chosen an adequate material for the product itself, as well as a link between these physical attributes and the message the brand wants to convey to the consumer (Ambrose & Harris, 2011; DuPuis & Silva, 2011).

Although not the most lightweight material, glass is often chosen due to its ease to be shaped into various figures, it is relatively resistant, translucent and 100% recyclable. Metal is a strong, cheap material and it can contain the product safely and without losing its quality for a minimum of three years, giving it protection during transport and it is, like glass, extremely recyclable. The plastic besides containing, protecting and displaying the product, can be easily printed on thereby supporting the marketing process. It is perhaps the most commonly used material for packaging since it is light, strong, easy to be shaped, and has low manufacturing costs. Yet, it is one of the most difficult materials to be recycled, presenting itself as quite harmful to the environment. Paper can be transformed and adapted for various packaging functions, thus easy to recycle (Calver, 2004; Ellicott & Roncarelli, 2010; Ambrose & Harris, 2011).

When properly chosen, the material will not only add visual and palpable value, but it may also reduce or increase costs and environmental impact, allowing a complete and unique packaging experience (Ellicott & Roncarelli, 2010; Ambrose & Harris, 2011).

### Shape

The functional and economical creation of packaging requires the selection of suitable materials and a suitable shape. These decisions influence not only the inherent costs, but also the tactile experience and its ergonomics (the ease to use the product). Thus, packaging is often shaped to be consistent with the core of the brand, for example, sensuality is transmitted through more rounded and organic lines while more straight and rigid lines suggest modernism and innovation (Retorta, 1992; Ambrose & Harris 2011).

Solely the fact that the shape of the packaging can be registered and patented validates its value, showing itself as an essential part of the brand, such as the widely recognized Coca-Cola bottle (Ellicott & Roncarelli, 2010).

### Label

As mentioned above, labels began to be employed solely to identify the products<sup>3</sup> contained and later started to act as a mean of communication contributing to the conception of the brand (Berger, 2002). Nowadays, in addition to inform the consumer about the features of the product, how to use them, chemical composition, bar codes and expiration dates, the Label has the purpose to identify the product and communicate the

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<sup>3</sup> Inferior quality products yet visually similar, were being sold to uninformed customers. To fight this, in the 1660s, the phrase "Let the buyer beware" became popular as unhappy honest merchants began to mark their products with it to alert potential buyers – and so Labelling was born. Berger (2002)

idea of the brand, differentiating itself from competitors (Berger, 2002; Kenneth & Bugusu, 2007).

The label is a vital part of packaging as it is the most complex since it integrates a range of elements such as typography, logo, images, texture and of prime importance, color. These should be thoroughly deliberated by the designer to be able to create a great engagement relationship between the product and the potential consumer (Retorta, 1992). Additionally, Ellicott & Roncarelli (2010) suggest that labels and corresponding packaging of competing products should also be considered, since the arrival of an unknown, different and attractive product may also attract a potential consumer to it.

### Color

The effective use of color in packaging undergoes a very thoughtful decision due to the countless connotations and messages that each color carries. The meanings of colors are quite broad, diverse and deeply conditioned by culture (Ambrose & Harris, 2011).

In fact, it is commonly known that colors incite reactions and stimuli both psychological as physiological in receivers as no other element of packaging, enabling its association to moods, desires, feelings, even places or happenings, as stated in Farina, Perez & Bastos (2006). Further, depending on their brightness/darkness, saturation/hue, contrast or if their put together, colors have their meanings and connotations (Farina *et al.*, 2006; McCauley, 2012). Thus, applied to packaging, darker and bright colors are associated with aggression, coldness or danger, which suggests that the product may have a more intense flavour or energetic connotation; lighter and soft colors are associated with tranquillity, peace and quiet, suggesting that the product is natural and pure (Beresniak, 2000; Mestriner, 2002).

Undoubtedly, color is the component that first stands out and eye-catches the consumer, being also one of the great instigators for the purchase decision. Color can influence perceptions of other components such as size, quality, value or even flavour (McCauley, 2012). As best put by the same author, “You've heard "money is power." Well how does one get the money? In the packaging world, the answer is color. Color is what gets your product noticed, and if your product gets noticed, your product might actually get purchased. See? Color leads to purchase. Purchases result in money. More purchases, more money. Money is power. I rest my case. (McCauley, 2012:2).

Ultimately, it is important to clarify that the material, shape, label and packaging color are elements that should be thought-out together, forming a whole, even though one of the elements can stand out from others. Examples of such packaging is Coca-Cola, Heinz, Toilet Duck, Kellogg's, among others (Retorta, 1992).

Assuredly it is clear that advertising and visual communication existing in packaging design adds value to the brand as it is through this that often the consumer is persuaded to purchase the product.

## **2.2. Packaging and Consumer**

The consistently growing competition in today's marketplace has demanded organizations to create new solutions and innovations to appeal to perception and attract consumer attention. Hence, in order to create an effective differentiation, organizations gear themselves with tools such as visual aesthetic that endows the product with

tremendous value, making it singular and desirable to the consumer (Mishra, 2015; Mumcua & Kimza, 2015).

### *2.2.1. Perceptions*

The consumer is undoubtedly a visual being and, as stated by Keller (1993) and Wang (2016), the aesthetic perception that the consumer has on the product, the feeling and understanding of what they see, can result in a positive interaction and stimulate the purchase behaviour.

Currently the concept of aesthetics is closely related to the success of organizations. Both Ampuero & Vila (2006) and Mumcua & Kimza (2015) show that many have been the efforts to plan strategies and make decisions that incorporate this concept, not only to influence consumer behaviour but also for the welfare of the brand reputation and identity, and consequently of the organization.

Utterly, when relating elements such as design, perception and purchase, becomes clear that visual aesthetic perception applied by packaging design elements may well increase the consumer perception of product origin, quality and other attributes, boosting its purchase (Mumcua & Kimza, 2015). In fact, it may even exist a negative correlation between the visual aesthetic perception and sensitivity to product price, that is, when the product packaging design is astounding consumer price sensitivity lowers. This suggests that aesthetic visual perception empowers consumers to purchase and organizations to earn higher profits (Chind & Sahachaisaeree, 2012; Mumcua & Kimza, 2015).

An eye-tracking study by Clement (2007) showed several stages in consumer behaviour while in the purchase process. The first two phases (pre-attention phase and succeed



attention phase) are the ones where packaging design has more impact being the ones that initially attract the consumer eye for the product, building it up in their mind. The third and fourth stage (tipping point and physical action phase) is where the physical analysis occurs and might subsequently lead to a purchase. The resulted phases are remarkably similar to the Moments of Truth (Nelson & Ellison, 2005) previously mentioned. This study demonstrated that people do not spend much time reading information and comparing prices but rather choosing what they want or need with their eyes, making long initial judgments of what they perceive of the product.

Thus, it is evident that perception has a crucial role in establishing interactions between the product and the consumer which may even influence and persuade them into purchasing the product.

### *2.2.2. Interaction and Influence*

Forthwith it is already reasonable to understand by the exposed literature that several authors agree on the importance of packaging design for organizations due to its influence on consumers. Undeniably, a good packaging allows consumers to have an emotional connection to the brand.

The packaging is the brands' promise of a quality experience. Besides personal preferences, it is suggested that at least 1/3 of product purchases decisions are based on packaging and its design. And since it takes only seven seconds to come up with an opinion on the product, the way that it is packed may be a determining factor to the purchase decision. Thus, an effective packaging helps consumers to find a product or a specific brand faster making their decisions easier (Jarski, 2014).

Undeniably packaging visual features are critical to a product purchase. Several studies on the consumer response to different packaging elements as the ones by Vyas (2015), Nawaz *et al.* (2012), Ahmed, Parmar & Amin (2014) and Poturak (2014), are often incongruent, yet, the vast majority agrees that visual information is much more attractive than the product description and information. Some consider that size is actually the most important feature to consumers, followed by color, images and shape (Vyas, 2015), while others show not only that color is definitely the variable with greater impact and the one factor that attracts the consumers the most (Nawaz *et al.* 2012), as well as quality, innovation, images and material are clearly related to consumer's behaviour towards the product (Ahmed *et al.* 2014; Poturak, 2014).

Regardless of other factors that may heavily affect the consumer such as price and the brand itself, it is suggested by Reimann, Zaichkowsky, Neuhaus, Bender & Weber (2010) that consumer prefers packaging with a higher aesthetic value rather than standardized packaging, even of renown brands, since the visual aesthetics of the packaging suggests that the choice for that product will be rewarded.

Interesting enough it is noteworthy some of the peculiar influences that elements of the packaging design have. It is proposed in Becker, van Rompay, Schifferstein & Galetzka (2011) study that when the shape has a more angular form tends to induce a more intense flavour sensation. Also, color saturation may have its influence in price expectations due to its likely connection to promotion strategies. That is, highly saturated colors are associated with products on sale or more economic ones while less saturated color are associated with more classy and exclusive products.

A research model was developed by Kuvykaite, Dovaliene & Navickiene (2009) in order to demonstrate the impact of the visual and verbal packaging features in the purchase decision, being that these may be more or less meaningful depending on the level of involvement, time pressure or personal characteristics of the consumer. In contrast to the above, verbal features, such as information and origin of the product revealed to be more important to the consumer even under time pressure. However, the visual features have demonstrated a greater influence when the consumer's involvement level is lower, where the size and material were the essential features.

With the consumer increasing demand, packaging begins to show great importance and to establish itself as a strategic communication tool. Consumers ground their purchasing decisions based on what they perceive, and their perceptions are determined by the features displayed in packaging design.

Along with the growing awareness of the importance of packaging, retailers began to adopt new packaging strategies to their products in order to be more competitive.

## **2.3. Packaging as a weapon in Retail**

### *2.3.1. Private Labels*

With the growing number of players in the market, retailers took advantage of changes in the economy and in the consumer behaviour, by implementing competitive strategies (Ailawadi & Keller, 2004; Cuneo, Milberg, Benavente & Palacios-Fenech, 2015). One of retailers' strategies is the launch of their own products – Private Labels – which have been a prevailing trend, have had a substantial growth and are gaining increasing

importance (Kumar & Steenkamp, 2007; Sethuraman & Gielens, 2014; Chen & Huddleston, 2016).

Private labels (PL) have plenty of varieties: (i) Representative PL – shows through name and packaging that it is produced and exclusively owned by the retailer; (ii) Exclusive PL – owned and produced by the retailer, yet not explicitly shown through name and packaging and (iii) Confined labels. These are then divided in Low, Medium and premium quality PLs (Dive & Ambade, 2016). PL development has been considered an extremely important differentiation strategy once that they are able to offer consumers an exclusive product strengthening their image and store loyalty (Vale, Matos & Caiado, 2016) creating an opportunity to differentiate themselves from retail competitors and even National Brands (Chen & Huddleston, 2016).

With their PLs retailers become double-agents, acting not only as customers but also as competitors for National Brand manufacturers. Thus, when in direct competition with brands they can uphold and benefit themselves by getting premium shelf space, in-store promotions, copycat packaging or even enhancing their negotiating power on pricing (Chen & Huddleston, 2016; Chakraborty, 2018).

Additionally, besides advertising and in-store display, the best way to communicate a PL benefits is through packaging. The first impression consumers have of a product is its packaging, and so retailers started developing packaging designs for their new products extremely similar to existing ones from manufacturing brands (NB) – the so-called *Copycatting* – as a strategy hoping to capture consumers' attention and benefit from association (Kapferer, 1995; Warlop & Alba, 2004; Van Horen and Pieters, 2012; Chen, & Huddleston, 2016).

In Portugal PLs are an increasing trend having grown the last few years not only in value as in volume (Table 1). However, in some sub-categories, PL have been losing share due to a great focus by the NBs to promote their products more efficiently.

	2011	2012	2013	2014	2015	2016
<b>Sales Volume</b>	3 461 681	3 782 176	3 838 715	3 917 200	3 997 447	4 160 540
<b>Growth</b>	-	9%	1%	2%	2%	4%

Table 1 – Sales volume of private label products (€) (INE, Survey of business premises, 2016)

This also applies to the Drink category, where PL are the key drivers for this category growth (Chart 1).

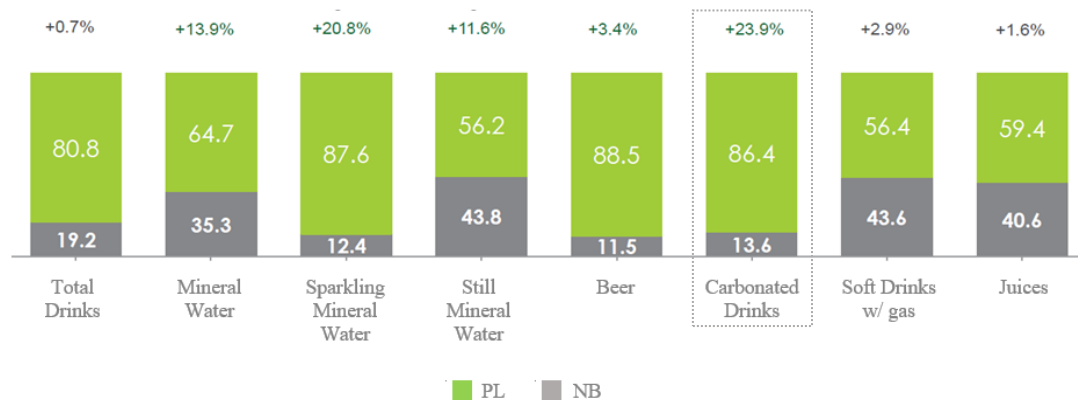


Chart 1 – PL & NB market share in the Drink category (Kantar Worldpanel, 2017)

PLs continuous growth may represent a threat to many NBs in Portugal, especially the ones that free-ride on NBs packaging design and copycat their trade dress.

### 2.3.2. Copycatting

It is said that most of the PL products are copycats – they essentially try to replicate the content and packaging of their competitors, usually the category leader which are studied, analysed and then reproduced. Retailers use in-store promotions to promote

their products by offering an almost identical product, nearly indistinguishable from competitor brands, at a much-reduced price (Dive & Ambade, 2016). Borrowing the trade dress from a leading NB is an alternative path that PLs take to decrease the perceived product quality gap, and additionally, when intentionally placed head-to-head with the leading brands it promotes product comparison and consumer confusion (Kumar & Steenkamp, 2007).

Copycatting strategy was initially focused on price, yet it is now not only targeting to compete on price but also in conquering a significant market-share through copycatting NBs packaging, aiming for a quality and status positioning (González-Benito and Martos-Partal, 2012; Steenkamp, Van Heerde, & Geyskens, 2010) associated with the original and leader brands.

Copycatting is not a stranger to History. In fact, with the booming of trading, the phrase "Let the buyer beware" arises as fallout of the increasing reproductions of fake and inferior products, produced and sold to uninformed consumers. Faced with this problem, original manufacturers began to distinguish their products to alert potential consumers, creating perhaps the first form of brand identity (Berger, 2002; Mittal, 2013).

These strategies, called copycatting or trade-dress imitation happen when a brand designs its product packaging with characteristics strongly similar to an already existing brand product – generally the category leader. It is a profitable marketing strategy since due to its resemblance to a leader brand, it might acquire the perception of quality, reliability, etc that the NB rightfully has, having a significant impact on products' acceptance and purchase by consumers (Kapferer, 1995; Warlop and Alba, 2004).

Several studies, as the ones that are about to follow, demonstrate that copycat branding can influence consumer choice, either positively or negatively.

It is suggested that the presence of a copycat brand alongside a NB makes consumers slower and inaccurate when making their choices, impairing their ability to find or even choose the product they really wanted (Leighton & Bird, 2012).

In fact, some studies (Walsh & Hassan, 2012; Vale & Matos, 2015; *Vale et al., 2016*) show that a copycatting packaging may not only transfer the original packaging positive characteristics to the copycat, as it gives to the consumer a perceived image of quality similar to the original packaging as if it was produced by the same manufacturer.

When following this kind of strategies PLs are chosen more often over NBs, than when using an own-packaging strategy. This indicates that the level of similarity between PL and NBs deeply influences the probability of the first being chosen over the latter. However, it has been also demonstrated that similarity evaluation is also deeply determined, directly or indirectly, by the presence or absence of the Leader Brand. When present the moderate-similarity copycat were evaluated more positively than high and low-similarity copycats but when absent high-similarity copycats were evaluated more positively than moderate and low-similarity (Van Horen & Pieters, 2012; Vale & Matos, 2015; *Vale et al., 2016*).

There are still divergent opinions on the harm caused by copycatting packaging brands to original packaging brands. This can be also be influenced by the experience that the consumer has with the copycat and the comparative judgment it performs. However, there are always two influencers that are always brought to light in this matter – Brand and Price. A positive relationship between consumers brand sensitivity and loyalty and

the propensity to purchase original product. Also, regarding price, if the consumer is used to purchase the original product they will carry on doing so because this increases their comfort and confidence with the product and with their decision (Leingpibul, Broyles & Kohli, 2013).

The impact of copycat strategy highlights the importance that packaging has on consumer behaviour. The references reviewed above are just a few among many that undeniably prove that packaging design features (such as logos, color, shape, typography, material or others that interact with the consumer) are inextricable connected with the distinct image and identity of a brand, and may evidently affect their perception and preference, influencing their behaviour and likely even lead to the product purchase.

When one imitates the trade dress used by another to distinguish and boost their products, a lawsuit for trademark or trade dress infringement may arise. The Legal Information Institute defines a Trademark as any word, name, symbol, design, or combination thereof used in commerce to identify and distinguish the products of a manufacturer from others indicating its origin. The trade dress has been included in this definition, referring to the visual characteristics of a product or its packaging such as color, graphic design, texture, shape. It does not require formal registration and is protected by law if it can be shown that it is distinct and recognizable (Aribarg, Arora, Henderson & Kim, 2014).



### 3. THE CASE STUDY

This case study involves two competing brands, a National Brand (NB) and a Private Label (PL), in the Energy Drink category – a category that has been constantly growing and is expected to continue for the next five years (Chart 2).

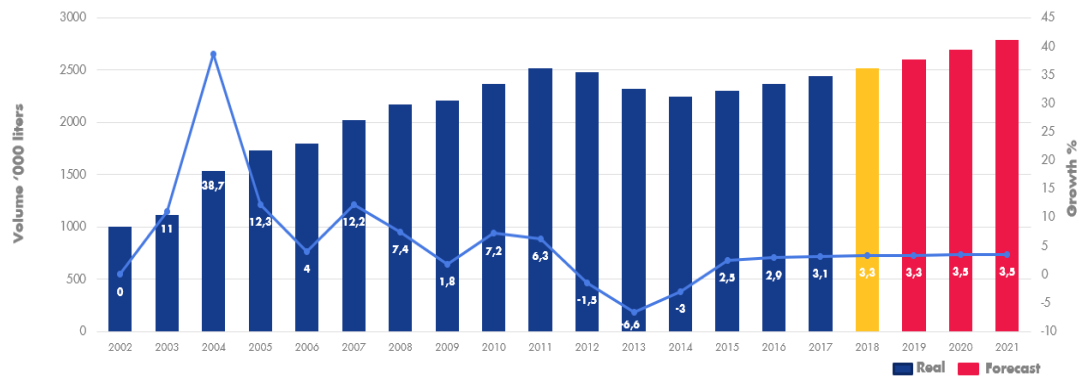


Chart 2 – Energy Drink Sales Volume (Euromonitor August 2017)

The Energy Drink category represents about 2% of the Drink Category, and as we can see below, here the PLs have been losing share yet still with a significant presence. The NB product was the first product of its kind in the drink category, creating a completely new category itself (energy category), and so far, the leading brand in the market – Brand A (Chart 3).

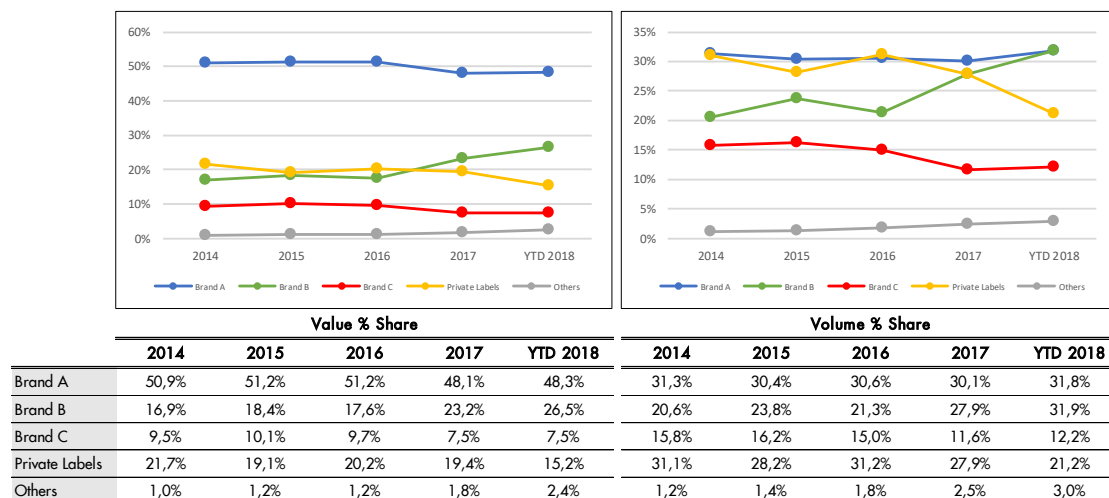


Chart 3 – Energy Drink Value and Volume Share (Nielsen, 2014 -2018)

The PL product belongs to one of the biggest players in the Portuguese Retail market, being important to state beforehand that this is a very concentrated market, held mainly by two key players (Chart 4), with an absolute concentration index ( $C_4$ , market share sum of 4 largest operators is 61%).

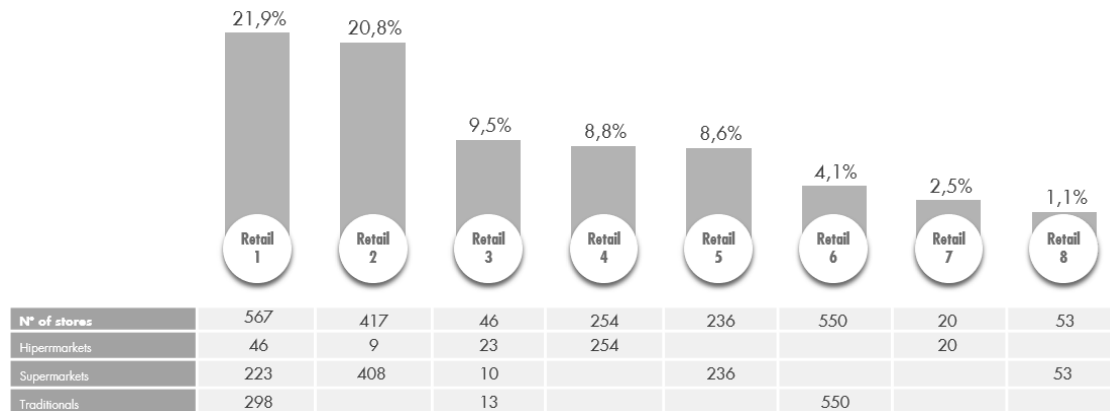


Chart 4 – Market Share in Portugal (PlanetRetail RNG, CaixaBank BPI, 2017 -2018)

Being the first product of its kind in the market, it was clear that the launch of this NB would require a unique packaging that would be able to communicate all that the brand wants to pass on – its functionality and promise – obtaining a strong presence in the consumers' minds. Today, its can is instantly recognized by consumers all over the world, and amazingly, it hasn't changed from its original iconic design.

However, for having such a clear standout in the market, plenty of PLs try to take advantage of that by copying an NB trade dress in the hopes of creating confusion amongst the of consumers. These consumers might be induced to think that this product is affiliated with the NB, creating a connection that transfers the qualities and the reputation that NB has to the PL (Walsh & Hassan, 2012; Vale & Matos, 2015; Vale *et al.*, 2016).

One of these brands is the retailer's PL chosen for this study, which despite having its brand in the market much before, had a rebranding of its trade dress in color and layout, "reentering" the market in February 2017.

The NB sales force brought to their superior's attention that there was a "new" brand, very similar, "hidden" near or even between the NB product.

The NB headquarters were contacted with a full explanation and photographic proofs to make sure this was in fact considered copycatting and to search for the best yet delicate counterattack as this was a PL of a very important retail client.

The lawyers were contacted and drafted a letter to the PL company stating that the NB's trade dress is registered, valid and immediately recognizable by the general population, and by consumers of energy drinks in particular, being a highly relevant factor of attraction and added distinctiveness. Hence, the retailer PL brand was inflicting NB's trademark rights, as well as showing a clear case of unfair competition, forbidden by Article 9 (2) (b) and (c) of Council Regulation (EC) No 207/2009 (Annex 1).

By placing such similar-looking products side by side with the NB's products, the retailer was creating confusion in consumers, who might be induced to think that they were buying a product which was, in one way or another, affiliated with the NB. This would create a connection with the products, transferring the qualities (Walsh & Hassan, 2012; Vale & Matos, 2015; Vale *et al.* 2016), and the reputation that the NB has managed to create for its products, which is forbidden by Article 260 of the Portuguese Industrial Property Code (Annex 2).

The PL owner implicitly acknowledged that its product packaging could indeed be a copycat of the NB therefore taking the advisable measurements to suppress the issue. Thus, in the context of a friendly agreement, the NB allowed a period of tolerance, during which the sale of the PL products under the current trade dress would remain possible but should not be replicated.

Fortunately, since this rebranding was managed by a different department of beverages suppliers, this situation did not harm their business relationship and there was no argument in the withdrawal decision against the NB proposal. Hence it was made an agreement of timings for which they needed to create a new image and stream stock.

The aim of this study is to verify if the consumers would in fact make incorrect assumptions between these two products features (quality, benefits, manufacturer) and to what extent are they visually similar.

## **4. METHODOLOGY**

### **4.1. Research Method**

For purposes of analysis of the present dissertation, an empirical quantitative study was carried out. Questionnaires were conducted in Qualtrics, and distributed via Social Networks (Facebook, Instagram, LinkedIn) and Email.

This questionnaire aims to understand if the consumer is indeed influenced by copycatting and if the NB and PL chosen for the study were in fact a relevant case of copycatting. This questionnaire, which can be seen in detail in the Annexes chapter (Annex 3), analyses four of the main competitors in the Energy Drink sector (two NB – products A and C – and 2 PL – products B and D), considering that a comparison between the two PL is never made since shoppers will never find them head-to-head as they are owned by distinct retailers.

Grounded on Vale & Matos (2015) questionnaire, in addition to the general questions such as Age, Gender and Country of Residence, the respondents were asked to answer if they were an Energy Drink shopper/consumer and to indicate to what extent they agreed/disagreed with the statements that followed through a Likert scale of 1 to 5.

In this part it was shown to the respondents a set of Energy Drink products where NBs and PLs were compared against each other in terms of perceived Quality, Benefits, Origin (manufacturer) and Visual Similarity. For the sake of our case study there were four sets of comparisons, each with two pairs, where the two brands of the matter were always featured. Additionally, respondents were asked if they ever got home with a different product than the one they wanted due to their visual similarity – accidentally or

on purpose – and why. Finally, the results were coded and analysed using the SPSS software based on pair sample T-test.

## 4.2. Results

There were 419 respondents whose 232 are female (55,4%) and 187 are male (44,6%), 47 respondents between the age of 16-24, 121 between 25-34, 124 between 35-44, 87 between 45-54 and 40 respondents over 50 years old. Within the respondents 112 (27%) are Energy Drink shoppers and 307 (73%) are not.

Respondents were asked about the product visual similarity (E.g. Question: Products A and B are visually similar). In these comparisons we can clearly notice that in all four sets products A (case study NB) and B (case study PL) have the highest agreement values of all pairs (mean>2,50), ranging from 3,37 to 3,46, with low significance values (sig.<0,05) related to the big gap from the other product comparisons ( $t > 7,293$ ). These results show us that in fact the respondents find that, visually, the NB is very similar to the PL.

Products are VISUALLY SIMILAR					
Set 1		Mean	N	T-Test	Sig.
	A & B	3,46	90	7,293	0,000
	A & C	2,01	90		
Set 2					
	A & B	3,45	86	9,105	0,000
	A & D	1,94	86		
Set 3					
	A & B	3,45	87	7,986	0,000
	B & C	2,13	87		
Set 4					
	A & B	3,37	87	10,001	0,000
	C & D	1,75	87		

Table 2 – Visual similarity between products (Questionnaire Data)

Regarding the quality comparisons (E.g. Question: Products A and B have the same quality) we can see that in three of the four sets products A (case study NB) and B (case study PL) have high agreement values (mean>2,50), yet with negative T values ( $t < -0,877$ ) which means that, with exception to set 2, the second pair was considered to have a more similar degree of quality than the first pair. However, the high significance values (sig.>0,05), with exception to set 1, tell us that the agreement degree is not so different between pairs. These results show us that most of the respondents think that all products have equal quality, with the highest level (mean=3,31) between products A(NB) and C(NB), which are the main competitors in the market.

Products offer the SAME QUALITY					
Set 1		Mean	N	T-Test	Sig.
	A & B	2,51	90	-5,391	0,000
	A & C	3,31	90		
Set 2					
	A & B	2,65	86	1,054	0,295
	A & D	2,55	86		
Set 3					
	A & B	2,52	87	-1,728	0,088
	B & C	2,71	87		
Set 4					
	A & B	2,48	87	-0,877	0,383
	C & D	2,59	87		

Table 3 – Perceived quality between products (Questionnaire Data)

As for benefit comparisons (E.g. Question: Products A and B offer the same benefits) we can distinctly notice that in all four sets all pairs have very high agreement values (mean>2,50), ranging between 2,80 and 3,60, showing us that the respondents agree that all products offer the same benefits, particularly A (case study NB) and B (case study PL), and again with the highest level (mean=3,60) products A and C (main competitors).

Products offer the SAME BENEFITS					
Set 1		Mean	N	T-Test	Sig.
	A & B	3,00	90	-5,226	0,000
	A & C	3,60	90		
Set 2					
	A & B	3,06	86	2,410	0,018
	A & D	2,80	86		
Set 3					
	A & B	3,13	87	-1,370	0,174
	B & C	3,28	87		
Set 4					
	A & B	3,05	87	-0,316	0,753
	C & D	3,08	87		

Table 4 – Perceived benefits between products (Questionnaire Data)

Curiously, when asked about the products manufacturer (E.g. Question: Products A and B where produced by the same manufacturer) we can clearly see that the majority of the sets have low agreement values (mean<2,50). This demonstrates that even though the respondents mostly agree that A and B products offer the same benefits and quality, they do not believe that they are produced by the same manufacturer. This might be due to the respondent knowledge of the category, brand or products.

Products where produced by the SAME MANUFACTURER					
Set 1		Mean	N	T-Test	Sig.
	A & B	2,31	90	1,732	0,087
	A & C	2,10	90		
Set 2					
	A & B	2,29	86	1,165	0,247
	A & D	2,17	86		
Set 3					
	A & B	2,48	87	-0,222	0,825
	B & C	2,51	87		
Set 4					
	A & B	2,18	87	-0,323	0,748
	C & D	2,21	87		

Table 5 – Products manufacturer (Questionnaire Data)



Additionally, respondents were asked if they ever got home with a different product than the one they wanted due to their visual similarity – accidentally or on purpose – and why. Although the gap is not so big, we can see that most respondents (50,4%) already purchased a product by mistake due to its visual similarity. Also 60% of the respondents does not buy a similar product on purpose, mainly because of its quality (56%), yet still quite a lot of respondents (40%) would choose to take another product due to its price or promotion (61%).

	YES	NO
Did you ever get home with a different product than the one you wanted due to their visual similarity?	50,4%	49,6%
Did you ever choose to buy a visually similar product over the one you usually buy?	40,3%	59,7%
<b>YES...BECAUSE...</b>		
Price / Promotion	60,7%	
Quality perception	35,7%	
Same manufactor perception	3,6%	
<b>NO...BECAUSE...</b>		
Brand Loyalty		13,7%
Product Familiarity		30,2%
Quality of the product		56,1%

Table 6 – Consumer purchases (Questionnaire Data)

## 5. GENERAL DISCUSSION

### 5.1. Conclusions

Product packaging is surely considered a vital for brands, utterly because its aesthetic influences the attitudes and behaviours of the consumer and may even encourage the act of purchase. (Mittal, 2013; Nawaz, Billoo, & Lakhan, 2012; Mumcua & Kimza, 2015).

Essentially, the purpose of this study was to perceive if indeed the PL packaging is visually similar to the NB – hence a copycat – and to what extent the consumers' incorrect assumptions between these two products features (quality, benefits, manufacturer) influences their purchases. This analysis will also shed some light on our case study and clarify if the PL is actually a copycat and if the NB actions against the retailer were in fact justified.

The analysis results demonstrate that visually, the NB (product A) is extremely similar to the PL(product B), further, this visual similarity might transfer the NB features to the PL. It is shown that there is a general agreement that the NB and PL offer the same benefits and quality, yet they do not think that they are produced by the same manufacturer. In fact, it is shown that most consumers have sometime mistakenly purchased a product due to its visual similarity with another.

The rebranding of the retailer PL was in essence a very similar type of packaging using the same combination of colors as the NB. The fact that solely the adaptation of the PL colors to resemble the NB is effective, supports literature such as Nawaz et al. (2012) and Vyas (2015), that credit it as the most important feature. This resemblance is demonstrated in our studies to have its impact in the consumers perception, as their

visual similarity created between them an association that gives to the consumer the perception that both products have similar quality and offer the same benefits (Walsh & Hassan, 2012; Vale & Matos, 2015; Vale et al. 2016).

It is also confirmed that most consumers would not buy a PL copycat on purpose as they are comfortable with their “regular buy” (NB) and confident with its quality – that being, quality and product familiarity are indeed heavy features in the consumers choice, as previously mentioned by such as Reimann et al. (2010), Leingpibul et al. (2013), Ahmed et al. (2014) and Poturak (2014). However, some consumers would change their pick to a different and similar PL essentiality if the price is cheaper or if it has a promotional price – upholding the price sensitivity idea of literature as Reimann et al. (2010), Chin & Sahachaisaeree (2012), Leingpibul et al. (2013) and Mumcu & Kimza (2015).

This study confirms that the retailer PL was in fact attested as a copycat, thus all the actions taken by the NB to obliterate this issue were with no doubt legitimized. Furthermore, this dissertation demonstrates the major influence of packaging on consumer behavior and its significance and impact to organizations.

## **5.2. Limitations to the Study**

In this dissertation, we focused on understanding the impact a specific PL and NB. Hence it can not be generalized as it is based on a small sample, focused on a still small category. It may be worth developing further studies to analyse to what extent the results of this study can be reflected in other categories and if generally PL may influence the consumers’ in-store decisions.

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## 6. ANNEXES

### **Annex 1 – Article 9. Rights conferred by a Community trade mark.**

1. A Community trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical with the Community trade mark in relation to goods or services which are identical with those for which the Community trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the Community trade mark and the identity or similarity of the goods or services covered by the Community trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

(c) any sign which is identical with, or similar to, the Community trade mark in relation to goods or services which are not similar to those for which the Community trade mark is registered, where the latter has a reputation in the Community and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the Community trade mark.

2. The following, inter alia, may be prohibited under paragraph 1:

(a) affixing the sign to the goods or to the packaging thereof;

(b) offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under that sign;

(d) using the sign on business papers and in advertising.

3. The rights conferred by a Community trade mark shall prevail against third parties from the date of publication of registration of the trade mark. Reasonable compensation may, however, be claimed in respect of acts occurring after the date of publication of a Community trade mark application, which acts would, after publication of the registration of the trade mark, be prohibited by virtue of that publication. The court seized of the case may not decide upon the merits of the case until the registration has been published.

#### **Annex 2 – Article 260. Limits to Rights Granted by Registration**

The rights granted by registration of a trademark do not entitle the proprietor to prevent third parties from using, in their economic activities, provided that it is carried out in conformity with the regulations and honest practices in industrial and commercial matters:

a) Their own name and address;

b) Indications relating to the type, quality, quantity, purpose, value, geographic origin and period and means of production of the product or service or other features of the products or services;

- c) The trademark, whenever this is required to indicate the purpose of a product or service, such as in the form of accessories or spare parts.

### Annex 3 – Questionnaire

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#### Start of Block: Introdução

In the scope of the Master's Degree in Corporate Sciences at ISEG (Lisbon Institute of Economics and Management), I would like to ask for your help in completing this simple survey.

This survey aims to understand the consumer's knowledge of the Energy Drink market.

Therefore it is only necessary that, in addition to the general questions, you indicate to what extent you agree/disagree with the statements of each pair of images, through a Likert scale of 1 to 5. Its completion will not take more than 3 minutes and the data collected will be anonymous.

Thank you in advance!

#### End of Block: Introdução

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#### Start of Block: Informação I

Q1 Gender

☐ Female (1)      ☐ Male (2)

---

Q2 Country of Residence

▼ Africa (1) ... South America ~ Venezuela (236)

---

Q3 Age Range

☐ 16-24 (1)      ☐ 25-34 (2)      ☐ 35-44 (3)      ☐ 45-54 (4)      ☐ >55 (5)

---

Q4 Are you an Energy Drink consumer/shopper?

☐ Yes (1) ☐ No (2)

End of Block: Informação I

---

Start of Block: Comparação I

Q5 For each set of images please indicate to what extent you agree/disagree with the following statements using a scale from 1 (strongly **disagree**) to 5 (strongly **agree**).

A B



Q5.1 Products A and B have the same quality.

☐ 1 (1) ☐ 2 (2) ☐ 3 (3) ☐ 4 (4) ☐ 5 (5)

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Q5.2 Products A and B offer the same benefits.

☐ 1 (1) ☐ 2 (2) ☐ 3 (3) ☐ 4 (4) ☐ 5 (5)

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Q5.3 Products A and B were produced by the same manufacturer.

☐ 1 (1) ☐ 2 (2) ☐ 3 (3) ☐ 4 (4) ☐ 5 (5)

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Q5.4 Products A and B are visually similar.

☐ 1 (1) ☐ 2 (2) ☐ 3 (3) ☐ 4 (4) ☐ 5 (5)

End of Block: Comparação I

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Start of Block: Comparação II

Q6 For each set of images please indicate to what extent you agree/disagree with the following statements using a scale from 1 (strongly disagree) to 5 (strongly agree).



Q6.1 Products A and C have the same quality.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---

Q6.2 Products A and C offer the same benefits.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---

Q6.3 Products A and C where produced by the same manufactor.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---

Q6.4 Products A and C are visually similar.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

End of Block: Comparação II

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Start of Block: Comparação III

Q7 For each set of images please indicate to what extent you agree/disagree with the following statements using a scale from 1 (strongly disagree) to 5 (strongly agree).

A D



Q7.1 Products A and D have the same quality.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---

Q7.2 Products A and D offer the same benefits.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---

Q7.3 Products A and D were produced by the same manufacturer.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---

Q7.4 Products A and D are visually similar.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

End of Block: Comparação III

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Start of Block: Comparação IV

Q8 For each set of images please indicate to what extent you agree/disagree with the following statements using a scale from 1 (strongly **disagree**) to 5 (strongly **agree**).

B C



Q8.1 Products B and C have the same quality.

☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

---



Q8.2 Products B and C offer the same benefits.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)
- 

Q8.3 Products B and C where produced by the same manufacturer.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)
- 

Q8.4 Products B and C are visually similar.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

End of Block: Comparação IV

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Start of Block: Comparação V

Q9 For each set of images please indicate to what extent you agree/disagree with the following statements using a scale from 1 (strongly **disagree**) to 5 (strongly **agree**).

**C**      **D**



Q9.1 Products C and D have the same quality.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)
- 

Q9.2 Products C and D offer the same benefits.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)
- 

Q9.3 Products C and D where produced by the same manufacturer.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)
- 

Q9.4 Products C and D are visually similar.

- ☐ 1 (1)      ☐ 2 (2)      ☐ 3 (3)      ☐ 4 (4)      ☐ 5 (5)

End of Block: Comparação V

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Start of Block: Informação II

Q10 Did you ever get home with a different product than the one you wanted due to their visual similarity?

☐ Yes (1)

☐ No (2)

---

Q11 Did you ever choose to buy a visually similar product over the one you usually buy?

☐ Yes (1)

☐ No (2)

---

*Display This Question:*

*If Q15 = Yes*

Q11.1 Why?

☐ Price / Promotion (1)

☐ Quality perception (2)

☐ Same manufacturer perception (3)

---

*Display This Question:*

*If Q15 = No*

Q11.2 Why?

☐ Brand Loyalty (1)

☐ Product Familiarity (2)

☐ Quality of the product (3)

**End of Block: Informação II**

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